

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL B**

IN RE:           KENNARD K. HELTON, Respondent  
                  Arkansas Bar ID#80050  
                  CPC Docket No. 2006-120

**CONSENT FINDINGS AND ORDER**

The formal charges of misconduct upon which this Findings and Order is based arose from information obtained from the Supreme Court case of *Jerry K. Short v. Sandra Short*, 06-914. The information related to the representation of Mr. Short by Respondent in 2006.

On or around September 26, 2006, Respondent was served with a formal complaint, supported by information contained in the Clerk's file in case number 06-914, *Jerry K. Short v. Sandra Short*. A response was filed. The Respondent and the Executive Director negotiated a discipline by consent proposal, which was submitted to this Panel.

The information before the Panel reflected that on March 24, 2006, a Notice of Appeal was timely filed in the Circuit Court of Pope County, Arkansas, in Case Number DR2005-311. Mr. Helton's client, Jerry K. Short, wished to appeal the final Decree of Divorce entered in that proceeding. On May 3, 2006, an Amended Decree of Divorce was entered. An Amended Notice of Appeal was filed on May 11, 2006.

On August 9, 2006, Mr. Helton tendered the record on appeal to the Clerk of the Arkansas Supreme Court. The record was not tendered within ninety (90) days of the filing of the first Notice of Appeal as required by Rule 5 of the Rules of Appellate Procedure - Civil. Rule 5 provides that the record on appeal shall be filed with the clerk of the Arkansas Supreme Court and docketed therein within 90 days from the filing of the first notice of appeal, unless the

time is extended by order of the circuit court. Rule 5 also prohibits any extension more than seven (7) months from the date of the entry of the judgment or order, or from the date on which a timely post-judgment motion is deemed to have been disposed of under Rule 4(b)(1), whichever is later.

Mr. Helton tendered the record within the seven month period of time. However, he failed to seek and obtain an extension of time for filing the record within the first 90 day period from the first Notice of Appeal filed in the lower court matter. Mr. Helton tendered the record on the 138<sup>th</sup> day from the date the first Notice of Appeal was filed with the Pope County Circuit Clerk. He was then notified by a Deputy Clerk that a Motion for Rule on the Clerk was necessary. He filed his Motion for Rule on the Clerk on August 15, 2006. In the Motion, Mr. Helton admitted that he erred by not requesting an extension of time. He also explained that he was acting on the belief that a new period of appeal had been running from the filing of the “nunc pro tunc” decree on May 3, 2006. The Supreme Court denied his Motion for Rule on the Clerk on September 7, 2006. The denial of the Motion for Rule on the Clerk results in Mr. Helton’s client, Mr. Short, not being able to pursue an appeal of the Decree of Divorce as he wanted.

In connection with the Consent to Discipline proposal, Mr. Helton provided information to the Committee demonstrating that he had advised his client, Mr. Short, in writing, that it was his error which caused the appeal to not be able to be pursued. He also provided documentation demonstrating that he had credited his client’s account with the amount his client had paid for the transcript for appeal. Further, Mr. Helton provided information that he had waived the amount owed on the billing to his client and had agreed to not charge him for further representation in the post-Decree matters.

Upon consideration of the formal complaint and attached exhibit materials, the response, the consent proposal, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Helton's conduct violated Arkansas Rule 1.3 when he failed to seek an extension of time to file the record on appeal at any point within the ninety (90) days following the filing of the first Notice of Appeal for his client, Jerry Short, and when he failed to file the record on appeal within ninety (90) days of the date of the filing of the first Notice of Appeal. Rule 1.3 requires that a lawyer act with reasonable diligence and promptness in representing a client.

2. That Mr. Helton's conduct violated Arkansas Rule 8.4(d) because his failure to file the record on appeal within ninety (90) days of the filing of the first Notice of Appeal resulted in the need for a Motion for Rule on the Clerk, which the Arkansas Supreme Court denied and which resulted in his client, Jerry K. Short, being denied an opportunity to appellate review of the Decree of Divorce in his divorce proceeding from Pope County Circuit Court case number DR2005-311. Rule 8.4(d) requires that a lawyer not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that KENNARD K. HELTON, Arkansas Bar ID#80058, be, and hereby is, CAUTIONED for his conduct in this matter. In addition, pursuant to Section 18.A. of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Helton is assessed the costs of this proceeding in the amount of \$100. The costs assessed herein shall be payable by cashier's check

or money order payable to the “Clerk, Arkansas Supreme Court” delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE  
ON PROFESSIONAL CONDUCT - PANEL B

By: \_\_\_\_\_  
Harry Truman Moore, Chair, Panel B

Date: \_\_\_\_\_

(13.M, Rev.1-1-02)